

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARTIN J. WALSH,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

V.

CIVIL ACTION NO.
1:21-cv-00899-RP

HI TECH MOTORCARS, LLC; HI TECH IMPORTS, LLC; and HI TECH LUXURY IMPORTS, LLC,

Defendant.

CONSENT JUDGMENT AND ORDER

The Plaintiff has filed his complaint against Defendants, Hi Tech Motorcars, LLC, Hi Tech Imports, LLC, and Hi Tech Luxury Imports, LLC (collectively “Hi Tech Defendants”). Hi Tech Imports, LLC, without admitting it has violated any provision of the Occupational Safety and Health Act of 1970 (“the Act”), have agreed to the entry of judgment without opposition.

A. The Plaintiff's Complaint alleges that the Hi Tech Defendants unlawfully discharged Michael Pacho from employment because of his exercise of rights secured by the Act by sending an email to all employees alerting them that a fellow employee had tested positive for Covid-19, and that Hi Tech Defendants thereby engaged in conduct that violated § 11(c)(1) of the Act by terminating Mr. Pacho.

B. Defendants assert that Hi Tech Imports, LLC, doing business as PorscheAustin, is the sole entity that employed Michael Pacho during the time period subject to the Complaint in this Lawsuit. As such, Plaintiff agrees to dismiss Hi Tech Motorcars, LLC and Hi Tech Luxury Imports, LLC from this lawsuit, as they were not Michael Pacho's employer.

C. Hi Tech Imports, LLC admits to the jurisdiction of this Court over it and the subject

matter of this action, acknowledges that this Court has the authority to enter and enforce this Order, and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

D. This Order represents a complete resolution of all the Secretary's claims asserted in this action. The Plaintiff and Hi Tech Imports, LLC expressly waive findings of fact and conclusions of law, except as otherwise set forth herein, and consent to the entry of this Consent Judgment and Order ("Consent Judgment") as a full and complete resolution of all claims which were made, or could have been made, by either party against the other, arising out of or in connection with the facts alleged in the Complaint, without trial or adjudication of any issues of fact or law raised in the Complaint.

E. In light of the resolution of this matter as set forth herein, Hi Tech Imports, LLC maintains its denial of the allegations contained in the Complaint, other than as to jurisdiction and venue and enter into this Consent Judgment without admitting any violations of the Act.

F. The Hi Tech Defendants entered into a Settlement Agreement with Michael Pacheco and the National Labor Relations Board on or about July 26, 2022 (Cases: 16-CA-273499 & 16-CA-291238) (the "NLRB Settlement"). The NLRB Settlement provided full back pay and reinstatement. Hi Tech Imports, LLC has fully and unconditionally reinstated Michael Pacheco to the position he held at Porsche Austin at the Porsche South Austin location with the same benefits as other similarly situated employees holding his same position and at an hourly rate of \$40.00 per flag hour, and will provide Michael Pacheco with the same opportunities concerning certifications and promotions as it does all other similarly situated employees, including but not limited to allowing him to test for his next consecutive increase in certification.

Accordingly, it is **ORDERED, ADJUDGED AND DECREED** that:

1. This Court has jurisdiction over the parties to this Consent Judgment and the subject

matter of this action and is empowered to provide the relief herein.

2. Hi Tech Imports, LLC is hereby enjoined and restrained from discriminating against Michael Pacho for exercising any rights afforded to him under Section 11(c) of the Act, such as sending an email to all employees alerting them that a fellow employee had tested positive for Covid-19.

3. Hi Tech Imports, LLC is further enjoined and restrained from discriminating against any and all employees because they engaged in, participated in, or supported Michael Pacho sending an email to all employees alerting them that a fellow employee tested positive for Covid-19, which gave rise to this lawsuit.

It is FURTHER ORDERED that:

4. Within 10 days after entry of this Consent Judgment, Hi Tech Imports, LLC shall pay the complainant, Michael Pacho, the sum of \$15,000 classified as compensatory damages, by means of a check or check(s) made payable to Michael Pacho in settlement of this action. In consideration of Hi Tech Imports, LLC's payment to Michael Pacho, the parties agree that all matters arising out of the claims in the Complaint are compromised and settled.

5. If in the future any prospective employer requests a job reference for Michael Pacho, Hi Tech Imports, LLC, its agents, employees, or representatives shall provide a neutral confirmation of employment, including the beginning and ending dates of Mr. Pacho's employment, job title(s), rates of pay, and that he is eligible for rehire unless terminated for cause. Hi Tech Imports, LLC has expunged from Michael Pacho's employment file of any reference to the adverse action that gave rise to this lawsuit.

6. Hi Tech Imports, LLC shall post a Notice to Employees, attached as Exhibit A, at

its facility for a period of sixty (60) days. The notice shall be conspicuously posted on a centrally located bulletin or memo so that all employees may read it. See Ex. A. Notice to Employees.

7. Furthermore, Hi Tech Imports, LLC shall post the OSHA Fact Sheet: Your Rights as a Whistleblower (in each employee's native language) attached as Exhibit B. The notice shall be conspicuously posted on a centrally located bulletin or memo so that all employees may read it for a period of sixty (60) days. See Ex. B. OSHA Fact Sheet: Your Rights as a Whistleblower.

8. Hi Tech Imports, LLC shall comply with the provisions of the Act and it shall not, contrary to Section 11(c)(1) of the Act, "discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." 29 U.S.C. § 660(c)(1).

9. All claims, assertions and causes of action against Hi Tech Motorcars, LLC and Hi Tech Luxury Imports, LLC, known or unknown asserted in the above styled cause by Plaintiff, are hereby dismissed with prejudice to refiling the same.

It is further ORDERED that each party bear their own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

SIGNED this 21st day of March

2023.


THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Hi Tech Imports, LLC waive its defenses to Plaintiff's Complaint and consent to the entry of this judgment:

DEFENDANT
HI TECH IMPORTS, LLC

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